



*The  
Canadian  
Bar Association  
British Columbia*

## **MEMORANDUM**

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**RE: SOCIAL SERVICE TAX AMENDMENT ACT (No. 2), 2004 (BILL 76)**

### **REDUCTION IN LEGAL SERVICES TAX PAYMENT IMPLICATIONS FOR LAWYERS**

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#### **INTRODUCTION**

On October 20, 2004, the *Social Service Tax Amendment Act (No. 2), 2004* (Bill 76) passed First Reading.

Bill 76 has implications for the payment of the legal services tax by lawyers.

An unofficial copy of the bill is available at:  
[http://www.legis.gov.bc.ca/37th5th/1st\\_read/gov76-1.htm](http://www.legis.gov.bc.ca/37th5th/1st_read/gov76-1.htm).

#### **REDUCTION IN TAX ON LEGAL SERVICES**

Effective October 21, 2004, Bill 76 reduces the sales tax on legal services from 7.5% to 7.0%.

Currently, sections 46 and 47 of Division 6 of the *Social Service Tax Act* impose a 7.5% sales tax on legal services.

Division 6 of the Act sets out the regulation of the legal services tax. For your convenience, an unofficial copy of Division 6 is attached at the end of this memo.

#### **PAYMENT IMPLICATIONS OF THE LEGAL SERVICES TAX REDUCTION**

Section 1 of Bill 76 amends sections 46(1) and (2) and 47(1) to strike out "7.5%" and substitute "7%".

Bill 76 makes no changes to the current law for legal aid, so there continues to be no sales tax for legal aid services provided under the *Legal Services Society Act*.

The sales tax on legal services is payable at the time the purchase price of the service is paid or payable, whichever is earlier (s. 49(1) of the *Social Service Tax Act*).

There is one exception and that is, if the lawyer providing the legal services is not obliged to and does not collect the tax under Division 6, the purchaser must pay the tax by delivering it to the commissioner by the 15th day of the month following the month in which the tax is otherwise required to be paid by subsection (1) (s. 49(2)).

The purchase price for legal services is deemed to be payable when it is billed or otherwise charged to the purchaser (s. 49(3)).

### **TIMING OF LEGAL SERVICES TAX PAYMENTS**

Prior to April 1, 1993, there was no sales tax on legal services in British Columbia.

#### **1993**

On April 1, 1993, a 7% sales tax applies to legal services provided (s.16 of *Social Service Tax Amendment Act (No. 2), 1993*, S.B.C. 1993, c. 24 (Bill 8)).

From April 1, 1993 to February 19, 2002, a 7% sales tax applies to legal services.

#### **2002**

For legal services provided on or after February 20, 2002, a 7.5% sales tax on legal services applies (s. 25 of *Taxation Statutes Amendment Act, 2002*, S.B.C. 2002, c. 19 (Bill 3)).

From February 20, 2002 to October 20, 2004, a 7.5% sales tax applies to legal services.

#### **2004**

For legal services provided on or after October 21, 2004, a 7.0% sales tax applies to legal services (s. 1 of Bill 76).

### **GOVERNMENT BACKGROUND INFORMATION**

For government background information, see the government's Notice to British Columbia Sellers and Taxpayers Tax Rate Reduction to 7% - *Social Service Tax Act* (available at:[http://www.rev.gov.bc.ca/ctb/notices/SST\\_New\\_Rate\\_Oct\\_2004.pdf](http://www.rev.gov.bc.ca/ctb/notices/SST_New_Rate_Oct_2004.pdf))

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## APPENDIX

### SOCIAL SERVICE TAX ACT, R.S.B.C. 1996, C. 431

Current as at October 20, 2004

#### Division 6 — Legal Services

##### Tax if legal services provided in British Columbia

**46** (1) If the purchaser or recipient of legal services provided in British Columbia resides, ordinarily resides or carries on business in British Columbia, a tax on the provision of the legal services must be paid to the government by the purchaser at the rate of 7.5% of the purchase price.

(2) If neither the purchaser nor the recipient of legal services provided in British Columbia resides, ordinarily resides or carries on business in British Columbia, a tax on the provision of the legal services must be paid to the government by the purchaser at the rate of 7.5% of the purchase price if the legal services are in relation to one or more of the following:

- (a) real property situated in British Columbia;
- (b) tangible personal property, within the meaning of paragraph (a) of the definition of tangible personal property, that is ordinarily situated in British Columbia or that is to be delivered in British Columbia, or the contemplation of either of these;
- (c) the ownership, possession or use in British Columbia of property other than that referred to in paragraphs (a) and (b), or the right to use such property in British Columbia, or the contemplation of any of these;
- (d) a court or administrative proceeding in British Columbia or a possible such proceeding;
- (e) the incorporation or contemplated incorporation of a corporation under the *Business Corporations Act* or the *Society Act*, or the registration or contemplated registration of a corporation as an extraprovincial company under the *Business Corporations Act* or as an extraprovincial society under the *Society Act*;
- (f) any other matter that relates to British Columbia and is prescribed as being included for the purposes of this section.

**Tax if legal services provided to British Columbia resident**

47 (1) A person who

- (a) resides, ordinarily resides or carries on business in British Columbia, and
- (b) is the purchaser of legal services provided outside British Columbia that relate to British Columbia

must pay a tax to the government in respect of the legal services, with the tax calculated as 7.5% of the purchase price of the legal services.

(2) For the purposes of subsection (1), legal services relate to British Columbia if they relate to any of the following:

- (a) a matter referred to in section 46 (2) (a) to (f);
- (b) a matter that involves the interpretation or application of an enactment as defined in the *Interpretation Act* or a former or proposed such enactment;
- (c) a matter that involves the interpretation or application of an enactment, or a former or proposed enactment, of a jurisdiction other than British Columbia, if the matter is in relation to
  - (i) a physical or legal presence in British Columbia or a contemplated such presence,
  - (ii) an activity in British Columbia or a contemplated such activity, or
  - (iii) a transaction in British Columbia or a contemplated such transaction;
- (d) a matter that involves the analysis or application of any law other than that referred to in paragraphs (b) and (c), if the matter is in relation to
  - (i) a physical or legal presence in British Columbia or a contemplated such presence,
  - (ii) an activity in British Columbia or a contemplated such activity, or
  - (iii) a transaction in British Columbia or a contemplated such transaction;
- (e) a contract or covenant, or a contemplated contract or covenant, that is in relation to
  - (i) a physical or legal presence in British Columbia or a contemplated such presence,
  - (ii) an activity in British Columbia or a contemplated such activity, or
  - (iii) a transaction in British Columbia or a contemplated such transaction.

(3) A person referred to in subsection (1) is exempt from tax under that subsection in relation to that portion of the purchase price which is for legal services that relate to a jurisdiction other than British Columbia if

(a) the person resides, ordinarily resides or carries on business outside British Columbia as well as in British Columbia, and

(b) part of the legal services referred to in subsection (1) relates to a jurisdiction other than British Columbia in the same manner as legal services relate to British Columbia within the meaning of subsection (2).

(4) For the purposes of subsection (3), the person must

(a) make a reasonable estimate, subject to the regulations, of that portion of the purchase price which relates to legal services referred to in subsection (3) (b),

(b) make and retain a record of the estimate and the basis on which it is made, and

(c) if the person who provided the legal services is required by this Act to collect the tax payable, provide a copy of the record to that person.

#### **Exception for legal aid services**

**48** No tax is payable under this Division in relation to legal services provided to an individual to the extent that the purchase price for the services is paid by the Legal Services Society, or by a funded agency within the meaning of the *Legal Services Society Act*, for the purposes of section 9 of that Act.

#### **When tax must be paid**

**49** (1) Tax under this Division must be paid by the date on which the purchase price of the legal services is paid or payable, whichever is earlier.

(2) As an exception to subsection (1), if the person providing the legal services is not obliged to and does not collect the tax under this Division, the purchaser must pay the tax by delivering it to the commissioner by the 15th day of the month following the month in which the tax is otherwise required to be paid by subsection (1).

(3) The purchase price for legal services is deemed to be payable when it is billed or otherwise charged to the purchaser.

#### **Liability of other persons**

**50** If there is more than one purchaser of legal services subject to tax under this Division, each purchaser is jointly and severally liable for the tax.

**General matters**

**51** (1) For the purposes of this Division, a person is deemed to be carrying on business in British Columbia if an employee or other representative of the person carries on activities in British Columbia on that person's behalf for the purpose of promoting the sale or use of the person's products or services.

(2) If the person providing legal services does so as a partner in a partnership or as an employee of an individual, partnership or corporation, a reference in this Act to that person is deemed to be a reference to the individual, partnership or corporation.

**Application of other provisions of Act**

**52** For the purposes of applying the other provisions of this Act in relation to a tax imposed by this Division,

(a) the receiving of legal services for consideration is deemed to be a purchase, and

(b) the provision of legal services for consideration is deemed to be a sale of tangible personal property at a retail sale,

except that Division 1 of this Part does not apply to a purchase of legal services.

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